Shook, Hardy & Bacon L.L.P.

AUGUST 25, 2011

PRODUCT LIABILITY LITIGATION REPORT

CONTENTS

EN BANC FEDERAL CIRCUIT INTERPRETS VACCINE ACT'S STATUTE OF LIMITATIONS IN MS CASE

Affirming the dismissal of a federal vaccine injury compensation program claim filed by a physician who purportedly developed multiple sclerosis (MS) after receiving Hepatitis-B vaccinations, the Federal Circuit Court of Appeals, sitting *en banc*, has revised its interpretation and application of the law's statute of limitations in a divided ruling. ***Cloer v. Sec'y of Health & Human Servs.*, No. 2009-5052 (Fed. Cir., decided August 5, 2011)**. The court also overruled a 2001 decision that precluded the use of the doctrine of equitable tolling in cases brought under the National Vaccine Injury Act, but found that it did not avail the claimant here.

The law requires claimants to file their petitions for compensation under the vaccine program within 36 months "after the date of the occurrence of the first symptom or manifestation of onset … of such [vaccine-related] injury." Claimant Melissa Cloer allegedly received three Hepatitis-B vaccinations in 1996 and 1997 and first manifested MS symptoms in 1997. The symptoms were sporadic through the following years, and, while MS was suspected, a definite diagnosis was not made until 2003. Cloer did not learn of an alleged potential link between the disease and the vaccinations until she read a September 2004 medical article. She brought her claim in 2005, arguing that the statute of limitations does not begin to run until a "clinically definite" diagnosis is made or was tolled because she had no reason to suspect a link to the vaccine until she read the article. A Federal Circuit panel found her claim timely in 2010, but agreed to hear the case *en banc* at the request of the Health and Human Services secretary.

The court focused on "what constitutes a 'vaccine-related injury' and what event triggers the running of the Vaccine Act's statute of limitations." Based on a "plain reading" of the statute, it rejected the claimant's argument that an injury cannot occur under the Act "until the medical community at large understands and recognizes the causal relationship between the claimed injury and the administration of a vaccine." It also rejected her argument that "the statute of limitations should not trigger until after a petitioner has suffered from six months of consistent, clinically related symptoms."

While the court determined that the Vaccine Act does not contain a discovery rule "that would key the accrual of a non-Table injury claim and the beginning of the statute of limitations to a claimant's discovery that the vaccine caused her injury"

SHB offers expert, efficient and innovative representation to clients targeted by class action and complex litigation. We know that the successful resolution of products liability claims requires a comprehensive strategy developed in partnership with our clients.

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and that the discovery rule cannot be read by implication into the law's statute of limitations, it also concluded that equitable tolling applies to the Vaccine Act. The court ruled that any strict time deadlines in the Act did not overcome a U.S. Supreme Court presumption that "all federal statutes of limitations are amenable to equitable tolling absent provision by Congress to the contrary."

Still, the court refused to apply equitable tolling here, finding it unavailable where the claimant bases application of the doctrine on "unawareness of a causal link between an injury and administration of a vaccine." According to the court, Cloer "individually asks for the same relief as a matter of equity that Congress has withheld from all petitioners as a matter of law. But we find no basis in equity for doing so." The four dissenting judges would have found that the Vaccine Act "incorporates a discovery rule under which the limitations period does not begin to run until the claimant knew or should have known of a connection between the alleged injury and a vaccine."

JPML CENTRALIZES CASES CHALLENGING DIAL SOAP ANTIBACTERIAL PROMOTIONS

The Judicial Panel on Multidistrict Litigation (JPML) has decided to consolidate for pre-trial proceedings 10 actions pending in seven federal district courts alleging that The Dial Corp. misled consumers by making "unsubstantiated health claims" while promoting Dial Complete Foaming Antibacterial Handwash® to consumers and further that the product's antibacterial ingredient "may lead to bacterial resistance." *In re: Dial Complete Mktg. & Sales Practices Litig.*, MDL No. 2263 (JPML, transfer order entered August 18, 2011). The cases have been transferred to the District of New Hampshire. While none of the parties sought transfer to this court, the JPML selected it because Judge Steven McAuliffe "is an experienced transferee judge who is presiding over one of the related actions and is not currently presiding over other multidistrict litigation."

SECOND CIRCUIT UPHOLDS $1.9 MILLION AWARD TO FTC FOR DECEPTIVE WEIGHT LOSS ADVERTISING CLAIMS

The Second Circuit Court of Appeals has determined that federal courts have the authority to award restitution in Federal Trade Commission (FTC) proceedings and that a district court did not err in ordering companies that make and falsely promote weight loss products to disgorge the full proceeds from the products' sales. ***FTC v. Bronson Partners, LLC*, No. 10-0878 (2d Cir., decided August 19, 2011)**. The ruling involved "the thoroughly unmiraculous Chinese Diet Tea and Bio-Slim Patch" products that FTC alleged were deceptively advertised, citing such product claims as "Sheds pound after pound of fat – fast!," "[e]liminates an amazing 91% of absorbed sugars," "[p]revents 83% of fat absorption," and "[d]oubles your metabolic rate to burn calories fast."

While the defendants agreed that the product promotions were deceptive under the Federal Trade Commission Act, they appealed from an order entering a permanent injunction against them and ordering the payment of nearly $2 million in monetary equitable relief and interest. They contended that the Act does not permit a court to order monetary relief and that the award was incorrectly calculated because the court awarded legal instead of equitable relief. The sum represented what the defendants earned in revenues from product sales in 2003 and 2004, calculated as a percentage of total revenues for that period. The district court concluded that it could award monetary relief under section 13(b) of the FTC Act, 15 U.S.C. § 53(b), as "a form of ancillary equitable relief that could be granted under its equitable jurisdiction."

The defendants also argued that the award should not include losses due to bounced checks and credit card chargebacks or to its expenses, including postage, storage and advertising. Given poor recordkeeping, however, the district court refused to adjust the award on these bases.

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According to the Second Circuit, FTC's unqualified statutory authority, which includes injunctive relief, also encompasses "the full range of equitable remedies, including the power to grant consumer redress and compel disgorgement of benefits." So ruling, the court agreed with similar rulings rendered in five other circuits and relied on U.S. Supreme Court authority that the comprehensiveness of equitable jurisdiction "is not to be denied or limited in the absence of a clear and valid legislative command." The court also agreed with the district court that the defendants had failed to meet their burden of proving their expenses and thus, that the award was correctly calculated. The court further ruled that, because the remedy involved disgorgement, the defendants were not entitled to deduct their costs.

NINTH CIRCUIT REVERSES BLUETOOTH™ CLASS SETTLEMENT, COUNSEL FEES WERE DISPROPORTIONATE

Without expressing an opinion on the fairness of the attorney's fee award, the Ninth Circuit Court of Appeals has returned a class-action settlement and fee award to a district court in a product liability action involving the purported potential for Bluetooth™ headsets to cause hearing loss; the appeals court found that "the disparity between the value of the class recovery [$100,000 in *cy pres* awards] and class counsel's compensation [$800,000] raises at least an inference of unfairness." ***In re: Bluetooth Headset Prods. Liab. Litig.*, MDL No. 1822 (9th Cir., decided August 19, 2011)**. The appeal involved more than 26 putative class actions filed in courts throughout the country and consolidated before a multidistrict litigation (MDL) court in California.

The plaintiffs claimed that they would not have purchased the headsets if they had known that using the devices for more than a few minutes each day exposes users to the risk of noise-induced hearing loss. They sought economic damages of $70 to $150 per headset, as well as restitution, punitive damages, attorney's fees, and costs. The MDL court certified a class of all persons in the United States who purchased Bluetooth™ headsets between 2002 and 2009; more than 100 million headsets were sold in the country during that period.

The parties successfully mediated the claims, and the defendants agreed to (i) post warnings on their Websites and in product manuals; (ii) pay $100,000 in *cy pres* awards to be divided among non-profits addressing hearing loss prevention issues; (iii) pay the costs of notice, up to $1.2 million; (iv) pay documented costs to class counsel of no more than $50,000; (v) pay attorney's fees not in excess of $800,000; and (vi) provide an incentive award to the named plaintiffs of no more than $12,000 in total. It was estimated that 80 percent of Bluetooth™ purchasers were reached by the notice plan, and, of the millions of potential class members, 715 opted out, and 50 chose to object. Following a hearing, the district court entered an order approving the settlement as fair, reasonable and adequate.

The appellate court first discusses the legal foundation for an attorney's fee award and how such awards are typically calculated in class action litigation, including a "lodestar" method that "is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." The district court apparently applied the lodestar method to calculate the award, while the objecting class members claimed that the court should have employed a percentage-of-recovery method to assess the reasonableness of the $800,000 fee award.

The Ninth Circuit determined that it lacked "a sufficient basis for determining the reasonableness of the award," because the district court did not make an explicit calculation of a reasonable lodestar amount, failed to compare the fee award and "the benefit to the class or degree of success in the litigation," and did not compare the lodestar amount with a reasonable percentage award. According to the court, "Absent any explanation from the district court, we are concerned that the amount awarded was 83.2% of the total amount defendants were willing to spend to settle the case [calculated by adding the attorney's fees, incentive award, *cy pres* award, and actual expenses]. Twenty-five percent of this $962,000 fund, by contrast, would have yielded only $240,000 in attorneys' fees."

Declining to rule that the disproportion was *per se* unreasonable, the court said that it had "no choice but to remand the case to the district court to permit it to make the necessary calculations and provide the necessary explanations." The court also reversed the settlement agreement approval "because the parties expressly negotiated a possibly unreasonable amount of fees, and because the district court did not take this possibility into account in reviewing the settlement's fairness the first time around."

In the court's view, several warning signs indicating implicit collusion between class counsel and the defendants were evident. The attorney's fees were disproportionate to the class award, "which includes no monetary distribution." The settlement included a "clear sailing" arrangement, providing attorney's fees to be paid separately and apart from the class funds. And "all fees not awarded would revert to defendants rather than be added to the *cy pres* fund or otherwise benefit the class," in what the court referred to as a "kicker" arrangement.

DISPUTE OVER ODOR-ELIMINATING CLOTHING FOR HUNTERS RETURNED TO DISTRICT COURT

A divided Eighth Circuit Court of Appeals panel has vacated an order enjoining companies that make and sell clothing to hunters from claiming that they are made with "odor eliminating technology" and can be reactivated in a household dryer. ***Buetow v. A.L.S. Enters., Inc.*, No. 10-2415 (8th Cir., decided August 18, 2011)**. According to the court, the plaintiffs "failed to prove both the requisite irreparable injury and their core allegations that Defendants' use of the terms 'odor eliminating' and 'reactivation' were literally false."

The court found that the plaintiffs, five hunters representing a putative class, "led the lower court into error" by asserting that Minnesota consumer protection law requirements are the same as those under the Lanham Act and that the Lanham Act permits courts to order injunctive relief without considering its elements once an advertisement is deemed literally false. While courts may presume that consumers were misled by a literally false advertisement "without requiring consumer surveys or other evidence of the ad's impact on the buying public," the court observes that the Lanham Act still requires the plaintiff to "show that it will suffer irreparable harm absent the injunction." The court also noted that the Lanham Act applies to cases involving competitors or plaintiffs protecting commercial interests and not to consumers, such as the plaintiffs, who were suing under state law. Thus, "[a]utomatically equating the standards of these state statutory claims to the standards that apply to Lanham Act cases between commercial parties is wrong."

The Eighth Circuit also found that the district court erred by basing "its determination of literal falsity on the most absolute of competing dictionary definitions of the word 'eliminate.' … We doubt there are many hunters so scientifically unsophisticated as to believe that any product can 'eliminate' every molecule of human odor." According to the appeals court, "it was error to enjoin all uses of the term 'odor eliminating' as literally false."

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A dissenting judge disagreed with the majority that the terms "odor eliminating" and "reactivation" were not literally false, stating "It is unwise to decide that just because the judges on the panel would not be deceived, it is therefore impossible that any reasonable consumer would be deceived. This is especially the case because the claims are scientific. I fear that the majority opinion sets up a slippery slope for future

false advertising claims brought by consumers, especially as consumer products become ever more hi-tech and complex."

KANSAS SUPREME COURT ALLOWS STRICT LIABILITY ACTION AGAINST SELLER OF USED HAY BALER

The Kansas Supreme Court has determined that a plaintiff injured when using a hay baler that his father purchased secondhand may pursue a strict liability action against the seller. ***Gaumer v. Rossville Truck & Tractor Co., Inc.*, No. 99,990 (Kan., decided August 12, 2011)**. So ruling, the court affirmed a court of appeals decision allowing the action and remanded the case for further proceedings.

According to the Kansas Supreme Court, the state's product liability law is based on a model act that excludes most sellers of used goods from the definition of "product sellers." The Kansas Legislature did not include that language when it adopted the law and, in fact, included within the definition of "product seller" "any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption." The court considers its own precedent, cases and statutes from other jurisdictions, and policy issues to conclude that strict liability may be applied against a seller of used products. It further observes, that a statutory defense which insulates a product seller from liability "if it can prove that it lacked knowledge of a product's defect, lacked a duty to inspect or complied with such a duty, and that the manufacturer is solvent and susceptible to jurisdiction," will adequately protect product re-sellers.

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ALL THINGS LEGISLATIVE AND REGULATORY

Obama Signs Legislation Amending CPSIA

President Barack Obama (D) has signed into law a bill (**H.R. 2715**) that amends the Consumer Product Safety Improvement Act of 2008 (CPSIA), giving the Consumer Product Safety Commission (CPSC) enhanced enforcement and discretionary authority. Additional details about the measure appear in the August 11, 2011, **issue** of this *Report*.

Among other matters, the law clarifies that the new lower lead content limit for children's products does not apply retroactively; as of August 14, 2011, all children's products must be made with less than 100 parts per million (ppm) total lead content. Products made before that date, if they contain less than 300 ppm, can still be sold. The law also exempts some products, such as bicycles, all-terrain vehicles, and printed books from the new lower threshold, as well as inaccessible component parts from CPSIA's phthalate limits.

CPSC Staff Issues Proposal to Regulate Play Yard Safety

The Consumer Product Safety Commission (CPSC) staff has issued a **draft proposed rule** that would establish safety standards for play yards. The Consumer Product Safety Improvement Act of 2008 requires CPSC to issue a mandatory play yard standard similar to or more stringent than applicable voluntary standards.

ASTM International, which has developed a play yard standard, defines play yard as a "framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children" who are shorter than 35 inches and cannot climb out. According to CPSC staff, from November 2007 through April 2011, more than 2,000 incidents related to play yards resulted in 49 fatalities, with most of the fatalities involving children ages 1 or younger and the rest involving children ages 1 to 3. The data apparently indicate that 37 deaths were related to the environment in or around the play yard, such as prone placement of the infant for sleeping, extra bedding or padding wedging the infant against the side of the play yard, and strangulation with window covering and computer cords, crib tents and other covers.

Addressing hazards associated with play yards themselves, the draft proposed rule recommends adopting ASTM F 406-11 with three modifications: (i) "Remove the size and shape restrictions from the clamping surface in the corner bracket structural integrity test in section 8.30.3.1"; (ii) "Clarify wording in the *Equipment* subsection (8.12.1) of 8.12 Floor Strength Test for Mesh/Fabric Products"; and (iii) "Clarify wording in subsection 8.12.2.1 of 8.12 Floor Strength Test for Mesh/Fabric Products." According to the August 17, 2011, staff briefing package, CPSC has scheduled a decisional meeting on the proposal for September 14. CPSC staff has recommended that the agency publish a notice of proposed rulemaking in the *Federal Register* and calls for a final rule to become effective six months after publication.

CPSC Issues Third-Party Testing Requirements for Children's Products; Offers Educational Guidance to Businesses

The Consumer Product Safety Commission (CPSC) has issued a **notice** of requirements that third-party assessment bodies must meet to be accredited to test children's products for conformity with certain ASTM International toy safety standards. The requirements were effective August 3, 2011, and comments are requested by September 2. Third-party conformity assessment bodies, among other things, must be accredited by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement.

Toy manufacturers must ensure that toys subject to ASTM F-963-08 and section 4.27 of ASTM F 963-07ε1 are tested for compliance by a CPSC-acceptable third-party laboratory beginning with toys manufactured after December 31. Based on the results of those third-party tests, the manufacturers must issue a written children's product certificate that certifies the toys' compliance with applicable requirements. *See Federal Register,* August 3, 2011.

In a related matter, CPSI has issued a draft **strategic outreach** plan designed to help small businesses and other stakeholders "learn about testing and certification requirements for children's toys and toy chests and their compliance with ASTM International" standards. The purpose of the plan is to provide "clear and detailed information to enable [affected parties] to plan and act accordingly and make more informed and timely business decisions." CPSC plans to post information about the plan and the toy safety standard on its Website by September 30.

According to CPSC, the outreach will involve three stages that will (i) inform stakeholders about the toy safety testing and certification requirements through traditional and social media, as well as via trade publications and organizations; (ii) provide "frequently asked questions" (FAQs) and examples, perhaps through instructional videos and Webinars, to help stakeholders better understand requirements; and (iii) promote higher rates of compliance through ongoing education at trade shows, conferences and international meetings. CPSC seeks comments on the most effective way to identify stakeholders, the tools necessary to explain the new rules to them, and trade magazines and other publications aimed at the toy industry. CPSC requests comments 45 days after publication in the *Federal Register*.

CPSC Reorganizes Agency, Commissioner Nancy Nord Demurs

The Consumer Product Safety Commission (CPSC) has approved what it characterizes as a "minor reorganization" that involves creating a second deputy executive director position, moving the Import Surveillance Division to the deputy executive director charged with oversight of safety operations, making changes to the offices of Information and Public Affairs and Information Technology, and changing the name of the Office of Congressional Relations. Commissioner Nancy Nord issued a statement opposing the changes, citing concerns with making the Import Surveillance Division a stand-alone operation and adding "another layer of management" with the creation of a second deputy position. *See CPSC Chair Inez Tenenbaum Statement*, August 11, 2011.

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FDA Issues Plan for Improving Science

The Food and Drug Administration (FDA) has issued its "**Strategic Plan for Regulatory Science**," a document deemed to be the agency's "blueprint for overhauling the science it uses to develop and evaluate food, medicines, and medical devices." Among the agency's priorities are modernizing toxicology, stimulating innovation in clinical evaluations and personalized medicine, supporting new approaches to improve product manufacturing, facilitating the development of medical countermeasures to protect against threats to U.S. and global health and security, and strengthening social and behavioral sciences to help consumers and professionals with their decisions about regulated products. FDA intends to involve stakeholders from the private sector in accomplishing its plan.

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LEGAL LITERATURE REVIEW

Frank Cruz-Alvarez & Laura Wade, "The Second Circuit Correctly Interprets the Alien Tort Statute: *Kiobel v. Royal Dutch," University of Miami Law Review,* Summer 2011

This article, co-authored by Shook, Hardy & Bacon Global Product Liability Attorneys Frank Cruz-Alvarez and Laura Wade, contends that the Second Circuit Court of Appeals, which split from other circuits in 2010 to find that the Alien Tort Statute (ATS) does not allow suits against corporations for violations of international law, was correctly decided. The plaintiffs in *Kiobel v. Royal Dutch Petroleum Co.* were Nigerian residents who brought suit in a U.S. court against Dutch, British and Nigerian corporations that engaged in oil exploration and production and allegedly "aided and abetted the Nigerian government in committing violations of the law of nations." The Second Circuit concluded, after examining "the specific and universally accepted rules that the nations of the world treat as binding in their dealings with one another," that the ATS does not make corporations liable under international law even if they are liable as juridical persons under domestic law.

Kenneth Abraham, "Strict Liability in Negligence," *DePaul Law Review* (forthcoming 2011)

University of Virginia School of Law Professor Kenneth Abraham examines how liability imposed in negligence and strict liability "cannot always be as clearly and easily distinguished as tort law in both theory and practice suggest[s]." Given that elements of strict liability have been incorporated in negligence, Abraham outlines two implications of his analysis: (i) "negligence is not the pure type of liability that it is sometimes thought to be" thus weakening "the claim that negligence liability may have to moral superiority over strict liability"; and (ii) while the different forms of liability are not controversial, "what to call them and how to justify them are."

Allan Erbsen, "Personal Jurisdiction, *McIntyre v. Nicastro,* and Horizontal Federalism," *PrawfsBlawg,* August 17, 2011

Harvard Law School Associate Professor of Law Allan Erbsen posted this commentary on the U.S. Supreme Court's recent plurality decision that addressed whether a New Jersey court could exercise personal jurisdiction over the British maker of a product that allegedly injured a New Jersey company's employee in the state. The Court determined that jurisdiction was unconstitutional because the manufacturer had not directly marketed or sold its product in New Jersey. According to Erbsen, the Court's reasoning can be understood as: "limits on jurisdiction implicate liberty, liberty implicates due process, due process requires focusing on state authority, and state authority is a function of the forum state's position among other coequal actors in the federal system. The opinion thus suggests that one cannot understand the scope of states' adjudicative jurisdiction without thinking about horizontal federalism."

Erbsen comments on gaps in the plurality's analysis and concludes, "In sum, the plurality opinion's reference to horizontal federalism in a context where such references had been missing is an interesting shift in emphasis that offers a tantalizing possibility of future evolution in personal jurisdiction doctrine. But the opinion does not consider, let alone embrace, the implications of its observation about why the Constitution limits the states' judicial reach."

LAW BLOG ROUNDUP

More Sunshine Needed?

"The progress toward implementing President Obama's scientific integrity memo is promising. Unfortunately, the implementation process continues to be haphazard." OMB Watch Federal Information Policy Analyst Gavin Baker, blogging about federal agencies' mixed record in submitting their draft policies for scientific integrity to the White House Office of Science and Technology Policy. While some have finalized their policies, others are behind schedule and still others are not apparently opening their policy development process to public scrutiny. The Food and Drug Administration's regulatory science overhaul plan is discussed elsewhere in this *Report*.

OMBWatch, August 11, 2011.

Presidential Politics to Implicate Tort Reform?

"[Texas Governor and Republican presidential candidate Rick] Perry is putting his tort-reform record front and center, and is the only candidate noting that part of our jobs problem is overlitigation." Manhattan Institute Center for Legal Policy Adjunct Fellow Ted Frank, discussing a blog post by a right-leaning law professor suggesting that he might support Rick Perry for president if only because trial lawyers hate him.

PointofLaw.com, August 23, 2011.

Shape-Up Shoes Generating Lawsuits By Injured and Disappointed Plaintiffs

"The suit is the latest in an ongoing legal backlash against Skechers over the Shape-ups shoes. In addition to the injury cases, a pending class action in the U.S. District Court for the Southern District of California accuses the company of fraudulently marketing the shoes as having health benefits." The BLT D.C. Courts Reporter Zoe Tillman, commenting on a new lawsuit claiming that a Skechers tennis shoe with a "rocker-bottom sole" caused serious injury to an Illinois woman who was wearing the shoes while touring Washington, D.C.

The BLT: The Blog of Legal Times, August 12, 2011.

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THE FINAL WORD

Rand Institute Publishes Monograph on Asbestos Litigation Trusts

The Rand Institute for Civil Justice has issued a **monograph** titled "Asbestos Bankruptcy Trusts and Tort Compensation" that explores interactions between the asbestos personal injury trusts established when asbestos defendants filed for reorganization under U.S. bankruptcy laws and the tort system. Based on asbestos filings and interviews with representatives of the plaintiff and defense bars and the trusts in California, Illinois, New York, Pennsylvania, Texas, and West Virginia, the monograph's authors "found a great deal of variation across states with regard to how trust compensation enters into the determination of tort awards." According to the monograph, potential outcomes for plaintiffs and defendants will vary depending on "liability regime, court procedures, and the behaviors of plaintiffs, defendants, and their attorneys." Highlighted are the effects of joint-and-several liability and several liability on compensation. The monograph concludes by noting that more data are needed to determine whether tort plaintiffs are being compensated more or less in practice and "to evaluate the performance of the current system and to suggest reforms that will improve outcomes."

UPCOMING CONFERENCES AND SEMINARS

Consumer Product Safety Commission, Bethesda, Maryland – September 26-27, 2011 – "North American Consumer Product Safety Summit." Product safety leaders from Canada, Mexico and the United States will discuss their ideas for enhanced consumer product safety cooperation and trilateral initiatives. They will also develop an agenda for future engagement. The summit will include public sessions. ■

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ABOUT SHB

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys have unparalleled experience in organizing defense strategies, developing defense themes and trying high-profile cases. The firm is enormously proud of its track record for achieving favorable results for clients under the most contentious circumstances in both federal and state courts.

The firm's clients include many large multinational companies in the tobacco, pharmaceutical, medical device, automotive, chemical, food and beverage, oil and gas, telecommunications, agricultural, and retail industries.

With 93 percent of our more than 500 lawyers focused on litigation, Shook has the highest concentration of litigation attorneys among those firms listed on the *AmLaw* ***100,*** *The American Lawyer's* list of the largest firms in the United States (by revenue).